

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RADNET MANAGEMENT INC. D/B/A SAN	:	
FERNANDO VALLEY INTERVENTIONAL	:	31-CA-222587
RADIOLOGY AND IMAGING CENTER	:	31-CA-225390

and

RADNET MANAGEMENT INC. D/B/A SAN	:	
FERNANDO ADVANCED IMAGING CENTER	:	

and

NATIONAL UNION OF HEALTHCARE WORKERS	:	
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**RESPONDENT RADNET MANAGEMENT, INC. D/B/A SAN
FERNANDO VALLEY INTERVENTIONAL RADIOLOGY AND
IMAGING CENTER’S RESPONSE TO NOTICE TO SHOW CAUSE
AND OPPOSITION TO GENERAL COUNSEL’S MOTION FOR
SUMMARY JUDGMENT**

As a Respondent in the above-captioned case, RadNet Management, Inc. d/b/a San Fernando Valley Interventional Radiology and Imaging Center (hereafter, the “Employer”) hereby responds, by and through the Employer’s Undersigned Counsel, to the Notice to Show Cause that was issued on October 17, 2018 by the National Labor Relations Board (hereafter, the “Board”), and hereby opposes, by and through the Employer’s Undersigned Counsel, the Motion for Summary Judgment (hereafter, at times, the “Motion”) that was filed on October 10, 2018 by the General Counsel.

BACKGROUND

1.) The Representation Proceedings

On November 9, 2017, the Employer and the National Union of Healthcare Workers (hereafter, the “Union”) entered into a Stipulated Election Agreement in connection with a unit that consisted of the Employer’s Technical employees (hereafter, the “Employees”). Case No. 31-RM-209388. In line with the Agreement, on December 6, 2017, the Board conducted an election (hereafter, the “Election”) on the Employer’s premises. The Tally of Ballots showed four (4) votes in favor of representation by the Union and two (2) votes in disfavor of representation by the Union.

On December 13, 2017, the Employer filed timely Objections (hereafter, the “Objections”) to the Election, together with an Offer of Proof. On January 12, 2018, the Regional Director of Region 31 (hereafter, the “Regional Director”) issued a Partial Decision on Objections and Notice of Hearing in which she overruled all of the Objections, except for Objection No. (2), which was scheduled for a hearing. As part of Objection No. (2), the Employer alleged that NUHW had filed false police reports against employees of RadNet Management, Inc.

The hearing on Objection No. (2) took place on January 29 and 30, 2018 before Hearing Officer Sarah Ingebritsen, who closed the record before the Employer had an opportunity to present all evidence in support of the Objection. On February 6, 2018, the Hearing Officer issued a Report on Objections in which she recommended that Objection No. 2 be overruled. On February 20, 2018, the Employer filed timely Exceptions to the Hearing Officer's Report, along with a Brief in Support of the Exceptions. On March 14, 2018, the Regional Director issued a Decision and Certification of Representative in which she overruled Objection No. (2) and certified the Union as the Employees' exclusive collective bargaining representative. On March 28, 2018, the Employer filed a Request for Review, which was denied by the Board on July 25, 2018.

2.) The Unfair Labor Practice Proceedings

On June 21, 2018, the Union filed an Unfair Labor Practice Charge (Case No. 31-CA-222587) in which the Union alleged the Employer had unlawfully failed and refused to recognize the Union as the Employees' exclusive collective bargaining representative. The allegation was repeated in an Unfair Labor Practice Charge that the Union filed on August 9, 2018 (Case No. 31-CA-225390).

On August 22, 2018, the Regional Director issued a Consolidated Complaint in which she alleged, based upon the above-referenced Charges, that the Employer had unlawfully failed and refused to recognize the Union as the Employees' exclusive collective bargaining representative. The Employer filed a timely Answer. In response to the Answer, as noted above, the General Counsel filed a Motion for Summary Judgment, which prompted the Notice to Show Cause to which the Employer now responds.¹

ARGUMENT

As a preliminary matter, like the General Counsel (see Motion, pages 13 – 14), the Employer respectfully requests that the Board take official notice of the record in Case No. 31-RM-209388. See e.g., Saint Xavier Univ., 366 NLRB No. 31 (2018); Four Seasons Environmental, Inc., 363 NLRB No. 115 (2016); FedEx Freight, Inc., 363 NLRB No. 126 (2016); see also Rules and Regulations of the National Labor Relations Board, as amended, §§ 102.68, 102.69(d). As the shown by the record from the underlying representation proceedings (see e.g., Motion, Ex. 19), the Regional Director erred by her issuance of the Certification of

¹ The Employer has also filed and served today a First Amended Answer to the Complaint.

Representative. Accordingly, the Board should deny the Motion and dismiss the Complaint.

Alternatively, the Board should deny the Motion based upon Sub Zero Freezer Co., 271 NLRB 47 (1984). See also Heuer International Trucks, 273 NLRB No. 57 (1984), Atlanta Hilton & Towers, 273 NLRB No. 9 (1984), St. Francis Hospital, 271 NLRB No. 160 (1984). In Sub Zero, where the employer's refusal to bargain with a labor organization also arose from objections to an election, the Board vacated the certification of representative that was issued in favor of the labor organization and dismissed the unfair labor practice complaint issued by the General Counsel. The Board took these steps because supporters of the labor organization had threatened the property and lives of voting employees, which showed the labor organization had not obtained the status of a majority representative from a free and fair election. Similarly, here, the Employer was deprived of an opportunity to pursue and present all evidence that would be probative of Objection No. (2). See Motion, Ex. 19, pages 40 – 51. Like Sub Zero, the conduct in which NUHW engaged would reasonably tend to intimidate employees and creates doubt as to whether a free and fair election actually took place. Accordingly, the Board should deny the Motion and remand the proceedings to the Regional Director.

CONCLUSION

For all the reasons set forth above, the Board should deny the Motion.

Dated: November 5, 2018
Glastonbury, CT

Respectfully submitted,

_____/s/_____

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CERTIFICATE OF SERVICE

The Undersigned, Bryan Carmody Esq., being an Attorney duly admitted to the practice of law, certifies, pursuant to 28 U.S.C. § 1746, that the above document was served this date upon the following by email:

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Dated: November 5, 2018
Glastonbury, CT

Respectfully submitted,

_____/s/_____

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